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Subject: WV Comments to draft formula grant guidance

To: orphanedwells, DOI <Orphanedwells@ios.doi.gov>, James Martin <james.a.martin@wv.gov>

Comments submitted by the WVDEP Office of Oil and Gas on DOI's Phase 1 (Fiscal Year 2023) State Formula Grant Guidance.

The West Virginia Department of Environmental Protection's Office of Oil and Gas ("WV") agrees with the comments provided by the IOGCC in the red-line version of the State Formula Grant Guidance submitted to DOI on February 10, 2023.

Additionally, WV offers the following enumerated comments on the draft guidance.

1) Phased approach

WV believes that the Bipartisan Infrastructure Law (BIL) does not contemplate a phased disbursement of grant funds. Under BIL, states were required to submit to DOI (within 45 days) their notice of intent to apply for the formula grant and provide the requisite data on plugging costs, job losses, and documented orphaned well counts. These data were to be used to develop a formula (within 75 days) that would determine the funding available through the formula grant. Within 60 days of application, funds would be disbursed to states. The BIL never addresses a re-application period or a need for manipulation of the formula at any point in the grant cycle.

WV believes that such an implementation erodes the states' ability to establish long-term partnerships by destabilizing funding support. States are competing with not only with each other but also industry for the finite number of plugging crews and equipment available. The establishment of a reliable funding source builds security and allows contractors to make the capital investments in the form of additional equipment and labor force necessary to build the infrastructure critical to efficiently plug wells at the scale needed to fully implement the BIL.

DOI stated that one motivating factor for the phased approach was to address the states that plugged all or most of their wells from the initial grant disbursement. In other words, they don't need as much anymore. In those cases, states should still be eligible to use their total eligible funding so long as they are continuing to find justifiable activities, as defined by the BIL. If grant monies go unspent during the grant lifecycle, WV suggests that they be made available for a re-application at a later date.

2) Application end date

WV believes that the application date should remain open. The BIL merely stipulates that states have 5 years from date of receipt of funds to obligate funds. By not imposing an arbitrary application end date, states will have optimal flexibility to take on the largest portion of their overall funding at a time of their choosing to maximize well plugging benefits, so long as it is within the funding period.

3) Environmental Justice

WV would request further guidance on how to prioritize the needs of disadvantaged communities against measurable environmental impacts which are independent of socio-economic factors.

4) MEQ guidance

WV believes the DOI guidance on methane emission quantification (MEQ) is flawed in its approach. Part III of the guidance correctly introduces a detect/non-detect threshold to be used to decide if further analysis is necessary. The threshold, however, is established in the units in g/hr, which is only obtainable from a full analysis. A more appropriate determination for detect/non-detect would be a concentration measurable in ppm.

5) Monthly reporting

WV believes monthly reporting to DOI is overly burdensome. Reporting should be no more frequently than quarterly. For the initial grant period, WV is requiring contractors to report monthly, and we are compiling that data for quarterly reporting to DOI. Requiring a monthly report would be an administrative burden and provide little benefit.

6) Expenditure vs obligation

WV still struggles to understand the expenditure deadlines and requests further explanation. The BIL continually references obligation requirements (5 years from receipt for this grant), but fails to clarify how long states have to actually spend the money. Can states establish contracts that are in place until the program funding ends so long as the funds are obligated in the first 5 years?

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